

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SUSAN GRABOWSKI,

Plaintiff(s),

vs.

CAROLYN W. COLVIN,
 Acting Commissioner of Social Security,

Defendant(s).

Case No. 2:16-cv-01654-JAD-NJK

ORDER

(Docket No. 1)

Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*, (Docket No. 1), and submitted a Complaint (Docket No. 1-1).

I. Application to Proceed *In Forma Pauperis*

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Docket No. 1. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to § 1915(a). The Court will now review Plaintiff's Complaint.

II. Screening the Complaint

Proceeding *in forma pauperis* is a privilege, not a right. *E.g., Williams v. Field*, 394 F.2d 329, 332 (9th Cir. 1968). When a party seeks permission to pursue a civil case *in forma papueris*, courts will screen the complaint pursuant to federal statute. *See* 28 U.S.C. § 1915(e). In particular, the governing statute provides that courts shall dismiss a case at any time if it determines that, *inter alia*, it is frivolous or malicious, or fails to state a claim on which relief may be granted. *See id.* A central function of this screening process is to "discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the cost of bringing suit." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

1 In civil cases in which the plaintiff seeks to proceed *in forma pauperis*, courts require that the
 2 plaintiff comply with the robust authority that complaints must provide sufficient notice of the basis of the
 3 claims presented and state a claim for relief. *See, e.g., Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir.
 4 2012). Complaints are subject to the pleading standards set out in Rule 8. *Swierkiewicz v. Sorema N.A.*,
 5 534 U.S. 506, 512 (2002). Although Rule 8 does not require detailed factual allegations, the complaint
 6 must set forth the grounds of the plaintiff's entitlement to relief and may not rest on "labels and
 7 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S.
 8 662, 678 (2009). Courts must accept as true all well-pled factual allegations contained in the complaint,
 9 but the same requirement does not apply to legal conclusions. *Id.* at 679. Mere recitals of the elements of
 10 a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678. Moreover, where
 11 the claims in the complaint have not crossed the line from conceivable to plausible, the complaint should
 12 be dismissed. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When a court dismisses a
 13 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as
 14 to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not
 15 be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).¹

16 A complaint in a social security appeal is not exempt from the Section 1915(e) screening of *in*
 17 *forma pauperis* cases generally. *Hoagland v. Astrue*, 2012 WL 2521753, *1 (E.D. Cal. June 28, 2012)
 18 (screening is required "even if the plaintiff pursues an appeal of right, such as an appeal of the
 19 Commissioner's denial of social security disability benefits"); *see also Lopez v. Smith*, 203 F.3d 1122, 1129
 20 (9th Cir. 2000) (en banc) ("section 1915(e) applies to all in forma pauperis complaints"). Moreover,
 21 although a complaint in a social security appeal may differ in some ways from other civil cases, it is also
 22 "not exempt from the general rules of civil pleading." *Hoagland*, 2012 WL 2521753, at *2. With respect
 23 to social security appeals specifically, the undersigned and several other judges in this District have
 24 outlined some of the basic requirements for complaints to satisfy the Court's screening. First, the plaintiff
 25

26 ¹ In cases in which the plaintiff is proceeding *pro se*, the Court liberally construes her pleadings.
 27 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se*
 28 pleadings is required after *Twombly* and *Iqbal*). As Plaintiff filed her Complaint *pro se*, the Court has
 liberally construed her filing.

1 must establish that she has exhausted her administrative remedies pursuant to 42 U.S.C. § 405(g), and that
 2 the civil action was commenced within sixty days after notice of a final decision. Second, the complaint
 3 must indicate the judicial district in which the plaintiff resides. Third, the complaint must state the nature
 4 of the plaintiff's disability and when the plaintiff claims she became disabled. Fourth, the complaint must
 5 contain a plain, short, and concise statement identifying the nature of the plaintiff's disagreement with the
 6 determination made by the Social Security Administration and show that the plaintiff is entitled to relief.
 7 *See, e.g., Graves v. Colvin*, 2015 WL 357121, *2 (D. Nev. Jan. 26, 2015) (collecting cases).

8 In this case, Plaintiff fails to establish the first requirement. Civil actions requesting review of the
 9 Commissioner's final decision must be commenced within 60 days. 42 U.S.C. § 405(g); *see also Tate v.*
 10 *United States*, 437 F.2d 88, 89 (9th Cir. 1971) (per curium) (affirming dismissal of action because it was
 11 filed two days late). As Plaintiff does not provide the date of the Commissioner's final decision, her
 12 complaint fails to establish that this action was timely. Docket No. 1-1 at 2.

13 **III. Conclusion**

14 Based on the foregoing, IT IS ORDERED that:

- 15 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED** with the caveat that the fees
 16 shall be paid if recovery is made. At this time, Plaintiff shall not be required to pre-pay the
 17 filing fee of four hundred dollars (\$400.00).
- 18 2. Plaintiff is permitted to maintain the action to conclusion without the necessity of
 19 prepayment of any additional fees or costs or the giving of a security therefor. The Order
 20 granting leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas
 21 at government expense.
- 22 3. The Clerk of Court shall file the Complaint.
- 23 4. The Complaint is **DISMISSED** with leave to amend. Plaintiff will have until **August 12,**
 24 **2016**, to file an Amended Complaint, if Plaintiff believes she can correct the noted
 25 deficiencies.

26 Dated: July 19, 2016

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 NANCY J. KOPPE
 United States Magistrate Judge